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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/889,033	07/07/1997	BARTHOLOMEW J. FRAZZITTA	D-1083	2912

28995 7590 07/16/2003

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EXAMINER

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ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 07/16/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 08/889,033

Filing Date: July 07, 1997

Appellant(s): FRAZZITTA ET AL.

Ralph E. Jocke, Reg. No 31,029
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's supplemental brief on appeal filed 10/05/01, which is in triplicate.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1, 28, 38, 41, 43, 45, 47, 2-27, 39-40, 29-37, 42 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

948
5,287,938

Casale et al.

02-1994

Art Unit: 2613

5,816,443 ✓	Bustos	10-1998
3,294,342	M. C. McClure et al.	12-1966
5,798,931 ✓	Kaehler	08-1998

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims: 1-47.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 12-13, 18-19, 24-27, 37-42, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casale et al. (US 5,287,948) in view of Bustos (US 5,816,443).

Re claims 1-4, 18, 19, 24-27, 37-42, and 47, Casale discloses a food delivery apparatus comprising a building (10 fig. 1) comprises an interior area in which includes an interior wall extending therein. Wherein Casale discloses a food delivery apparatus comprising a building (10 fig. 1) comprises an interior area which includes an interior wall extending therein, and an service provider (SP) station (second level housing) (14 of fig. 1) is housed in the interior area including:

a SP visual display, a SP CCTV camera, an SP audio transmitting device and an SP audio receiving device (col. 2, lines 27-56), and a delivery and receiving device (conveyor 90 of fig. 8) (col. 3, lines 24-68);

at least one customer station (the base housing) (12 of fig. 1) including:

a customer visual display (62 of fig. 12), wherein the customer visual is in operative connection with the SP CCTV camera, a customer CCTV camera in operative connection with the display, a customer audio transmitting device and a customer audio receiving device (speaker/microphone) (58 of fig. 12) in operation with the audio receiving device and SP audio transmitting device, respectively (col. 6, lines 29-35), and

a customer carrier delivery (90 of figs. 9-11, 14, 15) for delivery food from the second housing (14) to the base housing (12) when a service person receiving an order from the customer at the base housing (12),

wherein the apparatus is to provide a vertical pneumatic conveyor which takes up title space yet quickly delivers food products from the second housing (14) to the base housing (12) (col. 4, lines 13-16),

wherein the SP station (14) is housed inside the building (figs. 1 and 2) and at least one component of the SP station (see the SP camera, display) is in supporting connecting with said wall (the display is supposed to be connected to the wall where the service person can see the patron and the order) (col. 6, lines 58 through 7, line 2), wherein the customer terminal comprises a frame (the drive in window inherently has a frame (a door frame, a window frame or a cashier's access frame) and an opening for the customer pick up food or product) and an opening (22 of fig. 1), the customer components (e.g. camera, display) are in supporting connection with the frame (col. 5, lines 7-54).

wherein the second housing (SP station) is inside the building (10) so the SP station is housed in a secure room (where the service person only)

Re claims 12, 13, Casale further discloses the food delivery apparatus further comprises a plurality of customer stations (the first remotely locatable, and another remotely locatable) (col. 2, lines 11 and 36), wherein the SP station is in operative connection with a communication selector device (protestable menu and order display unit) (col. 6, lines 48-57), wherein at least one customer station comprises sensor (camera) to sense a person adjacent the customer station (col. 6, lines 33-36) includes an indicator (order received via menu and order display, when the customer presses on the menu display to order food) (col. 6, lines 49-53).

Furthermore, Casale discloses a carrier (conveyor trays) (94 of fig. 14) is able be selectively moved with a transaction item (food products) between the customer carrier delivery and receiving device and the SP carrier delivery and receiving device (col. 7, line 44 through col. 8, line 37), and the SP station (14 of fig. 1). Casale further discloses the food that is prepared within the second level housing (col. 6, lines 58-61), is inside the building (10 of fig. 1), and the customer station is on the side at lower level (ground level) of the building (10).

It is noted that Casale discloses the customer station is on the side of the building but it is not inside the building as claimed in claims 1-3. However, Bustos teaches and suggests the customer stations (104, 115-118 of fig. 5D) are inside the building. Therefore, taking the combined teaching of Casale and Bustos as a whole, it would have been obvious to one of ordinary skill in the art to apply the teachings of Bustos into Casale for constructing the customer stations as shown in fig. 5D inside the building as claimed, especially since inside eating will allow for comfort and shelter from the elements.

Re claims 12, 13, Casale further discloses the food delivery apparatus further comprises a plurality of customer stations, the first remotely locatable to another remotely locatable, (col. 2,

lines 11 and 36). And the SP station is in operative connection with a communication selector device, protectable menu and order display unit, (col. 6, lines 48-57) are disposed for the customer to order, the transaction would be transmitted from the customer menu to the service provider, at least one of customer stations comprises sensor as a camera to sense a person adjacent the customer station (col. 6, lines 33-36) includes an indicator as order received via menu when the customer presses on the menu display ordering food (col. 6, lines 49-53).

3. Claims 5-11, 14-16, 20-23, 28-36, and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casale et al. (US 5,287,948) in view of Bustos (US 5,816,443) and M.C. McClure et al (US 3,294,342).

Re claims 5-11, 14-16, 20-23, 28, and 43-46, the combination of Casale and Bustos, specifically Casale, discloses the apparatus is to delivery food or product from the second housing (14) to the base housing (12) using the pneumatic conveyor, and the customer at the base housing is able to pick up or order food or product at window (20) having column (28) which contains food or product.

It is noted that the combination of Casale and Bustos does not particularly disclose a cover is movably mounted on the frame and movable to enable access the opening in supporting to connect with the wall, a door frame, at least one hinge, a sub-frame, a shelf, at least one storage location as specified in claims 5-11, 14-16, 20-23, 28, and 43- 46.

However, M.C. McClure teaches a service banking equipment (figs. 1-5) having a customer station (10), the service station (18) and a pneumatic tube which carrier (51) that moves the capsule (40) from the customer station to the service station. Moreover, M.C. McClure

further suggests the customer station comprise a terminal which have a cover (36), the door carries the capsule, mounted on the frame to enable access to the opening (26') (col. 4, lines 24-34), a door frame (wherein the door (36) is connected to), one hinge, and a sub-frame are inherent in the art (fig. 1), wherein the cover includes a generally horizontal extending shelf wherein the door (36) is open in position (36') the customer is enable to conduct writing or other activities on said shelf (col. 4, lines 31-33) and at least one storage (a hollow cartridge), and switching device in operative connection with the service station (46), wherein the service station is a secure room (the teller station (18) is inside the bank which is a secure room), see also (cols. 2-5).

Therefore, taking the combined teachings of Casale, Bustos and McClure as a whole, it would have been obvious to one of ordinary skill in the art to modify the teachings of McClure into the customer station of the combination of Casale and Bustos in the same arrangement as claimed for the same purpose of serving the customer at the remote location in order to reduce time, and improve the productivity of servicing person by serving more than one customer at the time.

With regard to the various mechanical details listed in claims 5-11, 14-16, 20-23, 28, and 43- 46 such as a cover, a door frame, at least one hinge, at least one storage, a sub-frame that are notoriously well known in the art as a design choice. The specific mechanical shapes claimed are believed to be merely aesthetic design choice and are in any case not critical to the invention. See In Re Seid, 73 USPQ 431 (CCPA 1947). See also In Re Kuhle, 188 USPQ 7 (CCPA 1975).

Re claims 29-36, see the analysis in claims 5-11.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cascale et al. (US 5,287,948) in view of Bustos (US 5,816,443) and M.C McClure et al (US 3,294,342), as applied in claims 1-16, and further in view of Kaehler (US 5,798,931).

Re claim 17, the combination of Casale, Bustos and McClure fails to particularly disclose a computer for storing database at the service station. However the use of the computer for storing database at the service station is well known in the art as taught by Keahler (26 of fig. 1). Therefore, one skilled in the art would obviously modify the computer (26) into the service station of the combination of Casale, Bustos and McClure the same purpose of storing database for later review.

With regard to the claimed invention, the applied prior art is believed to formulate the rejections as described above. The obviousness is not only the specific teachings of a reference but also reasonable inferences which one of ordinary skill in the art would have logically drawn therefrom may be properly evaluated in formulating a rejection. In Re Preda, 401 F. 2d 825, 159, USPQ 342 (CCAP 1968) and In re Shepard, 319 R. 2d 194, 138 USPQ 148 (CCP 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, one skill in the art must be presumed to know something about the art apart from what the references disclose. In Re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962).

The obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F. 2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent knowledge of person skilled in the art to complement that is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

(11) Response to Argument

The applicable Legal Standards:

The appellant pointed out the rejection of the combination prior art. "This is known as *prima facie obviousness.*" Page 6 of the supplemental appeal brief.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Office Action above, paragraph 10, make obvious the claimed features.

The Casale Reference; The Bustos Reference; The McClure reference; and The Kaehter Reference, pages 7-11 of the supplemental appeal brief.

It is noted that the interpretations of The Casale, Bustos, and Kachler references are recognized.

35 U.S.C. § 103

The pending Claims are not Obvious Over

Casale in view of Bustos

The appellant argues that the rejections claims 1-4, 12-13, 18-19, 24-27, 37-42, and 47 are neither disclosed nor suggested in the prior art, and because there is not teaching, suggestion, or motivation cited so as to produce Appellant's invention, pages 12-14 of the supplemental appeal brief.

The examiner respectfully disagrees with appellant. It is submitted that Casale discloses a food delivery apparatus comprising a building (10 fig. 1), wherein the apparatus comprises an service provider (SP) station (second level housing) (14 of fig. 1), a SP visual display, a SP CCTV camera, an SP audio transmitting device and an SP audio receiving device (col. 2, lines 27-56), and a delivery and receiving device (conveyor 90 of fig. 8 and col. 3, lines 24-68).

Casale further teaches at least one customer station (the base housing) (12 of fig. 1), a customer visual display (62 of fig. 12, a customer CCTV camera is in operative connection with the display, a customer audio transmitting device and a customer audio receiving device (speaker/microphone) (58 of fig. 1)(col. 6, lines 29-35), where a customer carrier delivery (90 of figs. 9-11, 14, 15) for delivery food from the second housing (14) to the base housing (12) when a service person receiving an order from the customer at the base housing (12), a vertical pneumatic conveyor which takes up title space yet quickly delivers food products from the second housing (14) to the base housing (12) (col. 4, lines 13-16), wherein the SP station (14) is housed inside the building (figs. 1 and 2) and at least one component of the SP station (see the SP camera, display) is in supporting connecting with said wall (the display is supposed to be connected to the wall where the service person can see the patron and the order) (col. 6, lines 58 through 7, line 2), wherein the customer terminal comprises a frame (the drive in window obviously has a frame and an opening for the customer pick up food or product) and an opening

(22 of fig. 1), the customer components (e.g. camera, display) are in supporting connection with the frame (col. 5, lines 7-54); and wherein the second housing (SP station) is inside the building (10) so the SP station is housed in a secure room (where the service person only).

Moreover, Casale teaches the food delivery apparatus further comprises a plurality of customer stations (the first remotely locatable, and another remotely locatable) (col. 2, lines 11 and 36), wherein the SP station is in operative connection with a communication selector device (protestable menu and order display unit) (col. 6, lines 48-57), wherein at least one customer station comprises sensor (camera) to sense a person adjacent the customer station (col. 6, lines 33-36) includes an indicator (order received via menu and order display, when the customer presses on the menu display to order food) (col. 6, lines 49-53).

Furthermore, Cascale also teaches a carrier (conveyor trays) (94 of fig. 14) is able to be selectively moved with a transaction item (food products, money) between the customer carrier delivery and receiving device and the SP carrier delivery and receiving device (col. 7, line 44 through col. 8, line 37), and the SP station (14 of fig. 1), wherein the food is prepared within the second level housing (col. 6, lines 58-61), is inside the building (10 of fig. 1), and the customer station is on the side at lower level (ground level) of the building (10).

It is noted that Cascale teaches the customer is on the side of the building but it is not inside the building. However, Bustos suggests the customer stations (104, 115-118 of fig. 5D) are built inside the building. Since Casale teaches the food delivery apparatus having the customer station (12 of fig. 1) and the SP station (14 of fig. 1) and Bustos also suggests that the customer station (104 of fig. 5D) is built inside the building, hotel (101 of fig. 5D), which is in operative with the hotel office as interpreted the Service Provider (110, 102, 120 o f fig. 5D),

they are from the same endeavor as the product or food delivery apparatus. Therefore, it is shown that the teachings (104 of figure 5D) of Bustos have been obvious to built in the apparatus of Casale to receive the items delivered from the SP station (14) of Casale so that they are combinable to make obvious the claimed invention.

**The Independent claims are not obvious Over
Casale in view of Bustos**

Claim 1

The appellant argued that Casale does not discloses or suggest:

- 1) " The SP station and the customer station are in side of the building"
- 2) An "SP carrier delivery and receiving device" and a "customer carrier delivery and receiving device"
- 3) "The SP carrier delivery and receiving device is in operative connection with customer carrier delivery and receiving device."
- 4) "A carrier is enable to be selectively move with a transaction item between the customer carrier delivery and receiving device and the SP carrier delivery and receiving device." Pages 14-20 of the supplemental appeal brief.

In response, the examiner respectfully disagrees with the appellant. It has been submitted that Casale has ~~been~~ disclosed the all limitations 1) (14 of fig. 1), 2) (90 of figs. 9-11, 14, 15), 3) (conveyor 90 of fig. 8), and 4) (conveyor 90), see also the paragraph above. It would be recognized that the claimed features are obvious met by the elements in 1) 2), 3), and 4) as described in the above paragraph of Casale and when Casale and Bustos are combined.

Bustos does not disclose or suggest the recited features lacking in Casale,
Nor would it have been obvious to modify Casale with teachings of Bustos.

The appellant argued that Casale does not disclose the customer station is inside of the building, pages 20, 26, and 27 of the supplemental appeal brief. The examiner respectfully disagrees that Casale suggests the lower level (12 of fig. 1) would be built inside the building (10 of fig. 1) " in which" (col.5, line16). Bustos also teaches or suggests the customer stations that (104, 115-118 of fig. 5D) are built inside the building, a hotel (101 of fig. 5D), and the service provider as hotel office (110) or in combination of the hotel office (110), storage unit (102), bar (120), and kitchen (123) of fig. 5D. When Casale and Bustos are combined as proposed by the examiner, the customer station (104) of Bustos will receive the same items delivered from the SP station of Casale as claimed. Therefore, the claimed features would be taught or suggested in the combination of Casale and Bustos.

Casale desires customer to remain outside of the building

In response to appellant's argument that the references fail to show certain features of applicant's invention of the supplemental appeal brief, pages 20-21. It is noted that the features upon which applicant relies (i.e., "customer to remain outside of the building") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Casale building is not structurally capable an interior "customer station"

With respect the appellant's argument, "the building (10) is too small.... in the prior art.". "Noted *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988)," pages 21-22 of the supplemental appeal brief.

It would be appreciated that the appellant pointed out *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988); however, the arguments of the appellant are about the size of the building, no space, interior... as shown in pages 21-22 of the supplemental appeal brief which are not claimed in the claimed invention.

In further response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "customer to remain outside of the building") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Casale has no need of the recited "customer station"

With respect the appellant's arguments in pages 22-23 of the supplemental appeal brief, the examiner respectfully disagrees with the appellant.

Casale teaches the customer station (12 and 22 of lower level) that would obviously be built in the lower level (12) inside the building (10), and Bustos suggests the customer station (104) is also built inside the hotel (101) as described. It is clear that the customer station (104) of Bustos would obviously be built inside the building to receive the items, food and beverages,

personal items, from the SP station (14) of Casale. Therefore, the claimed features would be taught, suggested, disclosed or presented in the obvious combination.

An interior customer station would destroy the disclosed benefit of Casale

The appellant's argument "an interior customer station would destroy the disclosed benefit of Casale," pages 23-24 of the supplemental appeal brief.

In response to appellant's argument that the references fail to show certain features of applicant's invention. It is noted that the features upon which applicant relies (iceman interior customer station would destroy the disclosed benefit of Casale ") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Bustos does not disclose or suggest the recited "customer station"

The appellant pointed as underline above as well as paragraph in pages 24-25 of the supplemental appeal brief that Bustos does not disclose or suggest the recited "customer station".

The examiner respectfully disagrees with the appellant. It is submitted that Bustos's reference teaches the hotel (101 of fig. 5D) that comprises a pneumatic delivery system (col. 13, lines 50-55), the guest's room as interpreted the customer station (104 of fig. 5D). The pneumatic delivery system delivers food and beverages to the guests' room (104), and the customer uses television set remote controller to select or order items from a menu displayed on a television screen (col. 13, lines 48 through col. 14, lines 1-35). The command signals are

communicated through the television cable connection (109) to hotel office. This suggests or teaches the customer station is able to be operated by the customer for requesting a transaction (inputting device 108, menu 106) from the hotel office, which is inside the hotel. The pneumatic delivery (carrier) is able to be selectively moved with food and/or beverages (transaction item (s)) between the customer carrier delivery and receiving device and the Service Provider (40C of fig. 5D) and receiving device (video or audio (telephone) receiver). It is clear that Bustos suggests the customer station be built in the hotel. Therefore, the claimed features of the above paragraph would be taught, suggested or disclosed by Bustos and in the combination.

Bustos does not disclose or suggest the recited "SP station"

The appellant argued that Bustos did not disclose or suggest the recited "SP station", pages 26-27 of the supplemental appeal brief.

The examiner respectfully disagrees with the appellant. It has been submitted that Casale has disclosed the SP station (14 of fig. 1) and customer station (12 of fig. 1) as discussed above but Casale does not specifically teach the customer station is inside the building. Bustos does teach the customer station (104 of fig. 5D) is inside the building (101 of fig. 5D) as described in the previous paragraph and suggests the recited "SP station" interpreted as the combined system of the hotel office, kitchen, and storage (col.14, line 1- 21, 110, 40c, 102, 123 of fig. 5D). From the above passages, it is clear that the above claimed features are met by the elements as disclosed above of Casale and Bustos when the Casale and Bustos are combined.

It is noted that the obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969).

Claims 38, 41, and 47

The appellant has repeatedly argued the same features, shown on pages 29-47 of the supplemental appeal brief, which have been discussed in the paragraphs above. Therefore, the claimed features as in claim 38, 41, and 47 are unpatentable over the combination of Casale, Bustos.

The Dependent Claims Are Not Obvious Over Casale in view of Bustos

The appellant argued that the prior art alone or in combination disclose or suggest the features and relationships recited in each of the dependent claims 2-4, 12-13, 18-19, 24-27, 37, 39-40, and 42, pages 48-65 of the supplemental appeal brief.

In response, the examiner respectfully disagrees with the appellant. The features in each of the dependent claims as described have been addressed in the Office Action as shown in the paragraph 10 and the discussion above. Therefore, the claimed invention is unpatentable over the combination of Casale and Bustos.

Claims 2, 3

The appellant recites that " the customer station(s) is/are positioned within the interior area of the building" which are not disclosed neither Casale nor Bustos.

In response of the appellant's argument, Bustos discloses the customer stations, where the rooms (104 of fig. 5D), exercise room, and lobby (120 of fig. 5D) are built within the interior area of the building (101 of fig.5D). This suggests that the plurality of customer stations would be built inside the building of Casale when Casale and Bustos are combined to produce Appellant's recited invention.

Claims 4

The appellant pointed out that neither Casale nor Bustos taken alone or in combination discloses or suggests the following features as recited: "the customer station comprises: a frame"

In response, The examiner respectfully disagrees with the applicants. It is submitted that Bustos teaches the room (104 of fig. 5D) that also has a frame to receive food. Therefore, the teachings of Bustos is combinable with Casale.

In further response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Claims 12-13

The appellant argued that that neither Casale nor Bustos taken alone or in combination disclose or suggest the following features as recited: "the system comprises of plurality of customer stations, at least one customer station comprises a sensor, a video switching device, a video material presenting device", pages 51-53 of the supplemental appeal brief.

The examiner respectfully disagrees with the appellant. It is already submitted that the features are recited above disclosed by Casale and Bustos. Wherein the plurality rooms (104 of fig. 5D) are considered as customer stations.

Claims 18-19, 24

The appellant shows that neither Casale nor Bustos nor McClure taken alone or in combination disclose or suggest the following features as recited: " the building includes a secure room, and plurality of customer stations ", pages 54-56 of the supplemental appeal brief.

The examiner respectfully disagrees with the appellant. It is submitted that the video switching device is operative to selectively connect to the customer visual display to either video material presenting device or the SP CCTV camera (col. 2, lines 27-56)(62) as taught by Casale, where Casale suggests that the processing video unit at the SP that would be considered as a computer unit for storing data base such as a transaction.

The examiner further provides the service station and a secure room (interpreted as the room is inside the building as considered a secure room as suggested by Casale (10 of fig. 3), where the customer process of ordering is produced by a method as interpreted the processing method of ordering food as suggested by Bustos (col.13, lines 48 through col. 14, line 21), wherein each of the customer stations as considered a plurality of rooms or the customer stations

(104 of fig. 5D) being in operative connection to the SP station (110) as taught by Bustos (fig. 5D), so they are from the same endeavor and combinable to make Appellant's invention.

Claims 24-27, 37, 39, 40, and 42

The appellant argued that neither Casale nor Bustos teaches or suggests "the SP station further includes a communication selector unit, a customer accountable device comprises a customer presence sensor, a relationship involving the queuing device, a customer station, SP station, customer presence sensor and a customer", pages 56-65 of the supplemental appeal brief.

In response, the examiner respectfully disagrees with the appellant. It is submitted that Casale discloses a food delivery apparatus comprising a building (10 fig. 1) comprises an interior area which includes an interior wall extending therein, and an service provider (SP) station (second level housing) (14 of fig. 1) is housed in the interior area including: a SP visual display, a SP CCTV camera, an SP audio transmitting device and an SP audio receiving device as this is interpreted as a customer station, SP station, customer presence sensor and a customer (col. 2, lines 27-56), and a delivery and receiving device (conveyor 90 of fig. 8) (col. 3, lines 24-68); at least one customer station (the base housing) (12 of fig. 1) including a customer visual display (62 of fig. 12) as considered a customer actuatable device seeing the person standing, wherein the customer visual is in operative connection with the SP CCTV camera, a customer CCTV camera in operative connection with the display, a customer audio transmitting device and a customer audio receiving device (speaker/microphone is also considered as an actuatable device) (58 of fig. 12) in operation with the audio receiving device and SP audio transmitting device, respectively (col. 6, lines 29-35), and a customer carrier delivery (90 of figs. 9-11, 14,

15) for delivery food from the second housing (14) to the base housing (12) when a service person receiving an order from the customer at the base housing (12), wherein the apparatus is to provide a vertical pneumatic conveyor which takes up title space yet quickly delivers food products from the second housing (14) to the base housing (12) (col. 4, lines 13-16), wherein the SP station (14) is housed inside the building (figs. 1 and 2) and at least one component of the SP station (see the SP camera, display) is in supporting connecting with said wall (the display is supposed to be connected to the wall where the service person can see the patron and the order) (col. 6, lines 58 through 7, line 2), wherein the customer terminal comprises a frame (the drive in window inherently has a frame and an opening for the customer pick up food or product) and an opening (22 of fig. 1), the customer components (e.g. camera, display) are in supporting connection with the frame (col. 5, lines 7-54); wherein the second housing (SP station) is inside the building (10) so the SP station is housed in a secure room (where the service person only).

Furthermore, the customer stations are inside the building as suggested by Bustos (fig. 5 D). In view of the discussion above, the claimed features are unpatentable over the combination of Casale and Bustos.

The Independent Claims Are Not Obvious Over
Casale in view of Bustos and McClure

The rejected claims include the independent claims 28, 43, and 45. It is respectfully submitted that these claims are allowable over Casale in view of Bustos and McClure as shown in the supplemental appeal brief, pages 67-79.

The examiner respectfully disagrees with the appellant. It is recognized that all limitations in the claimed features have been taught by the combination of Casale and Bustos above and further submitted that McClure teaches the customer station having a terminal that comprises a cover (36) (the door carries the capsule) mounted on the frame to enable access to the opening (26') (col. 4, lines 24-34); a door frame (wherein the door (36) is connected to), one hinge, and a subframe are inherently in the art (fig. 1), wherein the cover includes a generally horizontal extending shelf wherein the door (36) is open in position (36') the customer is enable to conduct writing or other activities on said shelf (col. 4, lines 31-33) and at least one storage (a hollow cartridge), and switching device in operative connection with the service station (46), wherein the service station is a secure room (the teller station (18) is inside the bank which is a secure room). It is recognized that the teachings of McClure above that would be used in the customer station when the Casale, Bustos and McClure are combined.

The Dependent Claims Are Not Obvious Over

Casale in view of Bustos and McClure

as shown in pages 80-101 of the supplemental appeal brief

The appellant recites that " the customer station(s) is/are positioned within the interior area of the building" which are not disclosed neither Casale nor Bustos nor McClure

In response of the appellant's argument, Bustos discloses the customer stations, where the rooms (104 of fig. 5D), exercise room, and lobby (120 of fig. 5D) are built within the interior area of the building (101 of fig.5D). This suggests that the plurality of customer stations would

be built inside the building of Casale when Casale and Bustos are combined to produce Appellant's recited invention.

The appellant argued that neither Casale nor Bustos nor McClure taken alone or in combination discloses or suggests the following features as recited: "the customer station comprises: a frame, a cover, a door frame, at least one hinge, a subframe, a generally horizontally extending shelf"

In response, As disclosed in the previous paragraph, all mechanism elements, "the customer station comprises: a frame, a cover, a door frame, at least one hinge, a subframe, a generally horizontally extending shelf, " that are used to construct or build the customer station are well known in the art as taught by McClure (cols. 3, line 27 through col. 5, line 21). It would have obvious to one of ordinary skill in the art to combine Casale, Bustos and McClure to produce Appellant's recited invention.

In further response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The appellant argued that that neither Casale nor Bustos nor McClure taken alone or in combination disclose or suggest the following features as recited: "the cover includes at least one storage location, the system comprises of plurality of customer stations, at least one customer

station comprises a sensor, a video switching device, a video material presenting device", pages 84-86 of the appeal brief.

The examiner respectfully disagrees with the appellant. It is already submitted that the features are recited above disclosed by McClure, Casale and Bustos, where the cover includes at least one storage location (a hollow cartridge) by McClure, the system comprises of plurality of customer stations as taught by Bustos, at least one customer station comprises a sensor (camera) as taught by Casale, a video switching device and a video material presenting device as the display of McClure (figs. 1-5). Where Casale also discloses the display (62) that is a video material presenting device. They are in the same field of endeavor so that the combined Casale, Bustos and McClure would obvious make Appellant's invention.

The appellant shows that neither Casale nor Bustos nor McClure taken alone or in combination disclose or suggest the following features as recited: " the video switching device is operative to selectively connect to the customer visual display to either video material presenting device or the SP CCTV camera, a computer for storing data base at the service station, a secure room, the customer is produced by a method, wherein each of the customer stations being in operative connection to the SP station", pages 86 and 87 of the appeal brief.

The examiner respectfully disagrees with the appellant. It is submitted that the video switching device is operative to selectively connect to the customer visual display to either video material presenting device or the SP CCTV camera (col. 2, lines 27-56)(62) as taught by Casale, where Casale suggests that the processing video unit at the SP that would considered as a computer unit for storing data base such as a transaction. The examiner further provides a well known computer for storing data base at the service station and a secure room as taught by

Kaehler (26 of fig. 1), where the customer process of ordering is produced by a method as interpreted the processing method of ordering food as suggested by Bustos (col.13, lines 48 through col. 14, line 21), wherein each of the customer stations (104 of fig. 5D) being in operative connection to the SP station (110) as taught by Bustos (fig. 5D), so they are from the same endeavor and combinable to make Appellant's invention.

Claims 29-36, 44, and 46

The appellant repeatedly argued the same features as shown in claims 5-11, 14-16, 20-23. All claimed features that have been addressed in the previous paragraph, the previous Office action, paper No. 9, and the discussion above are unpatentable over the combination of Casale, Bustos, McClure.

Claims 17 is Not Obvious Over

Casale in view of Bustos and McClure and Kaehler

The appellant argued that "a video material presenting device" is not disclosed in neither Casale, Bustos, McClure nor Kaehler.

It is noted that the combination of Casale and Bustos teaches the SP station (14) and customer stations (104) which are positioned inside the building, and McClure reference teaches, suggests or discloses a cover (36 of figs. 3-5) mounted on the frame to enable access to the opening (26'), and a door frame, one hinge, a sub-frame, shelf, one storage (cols. 3, line 27 through col. 5, line 21).

All the well-known elements would be used to build the customer station as suggested by McClure, whether the customer station would be built inside or outside the building. Specifically this case, the customer station is obviously built in side the building as suggested by Bustos (104 of fig. 5D) and the combination of Casale and Bustos. Therefore, the claimed features would be taught, suggested or disclosed by McClure in combination with Bustos and Casale.

The use of the computer for storing database at the service station is well known in the art as taught by Keahler (26 of fig. 1). Therefore, one skilled in the art would obviously modify the computer (26) into the service station of the combination of Casale, Bustos and McClure the same purpose of storing database for later review.

Conclusion of Obviousness

The obviousness is not only the specific teachings of a reference but also reasonable inferences which one of ordinary skill in the art would have logically drawn therefrom may be properly evaluated in formulating a rejection. In Re Preda, 401 F. 2d 825, 159, USPQ 342 (CCAP 1968) and In re Shepard, 319 R. 2d 194, 138 USPQ 148 (CCP 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985).

Moreover, one skill in the art must be presumed to know something about the art apart from what the references disclose. In Re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F. 2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent

knowledge of person skilled in the art to complement, that which is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

Conclusion

It is found that there was an adequate suggestibility within the prior art itself as well as common sense and thinking processes that would have been fairly attributed to one skilled in the art to have performed the modifications. Therefore, the subject matter in claims 1-47 would have been fully obvious disclosed in the combination of Casale, Bustos, McClure and Keahler. So the rejection as set forth in the rejection is maintained.

Art Unit 2613

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June 30, 2003


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